



May 11, 2000

Mr. James Nolan
Supervising Attorney
Legal Department
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2000-1848

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135586.

The Texas Workforce Commission ("TWC") received a request for "a copy of the proposal and evaluation documents" for a request for offers for an analysis of TWIST Architecture. You believe that the requested information may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code as confidential or proprietary information of a third party. We have considered the exception you claim and reviewed the submitted information.

We note initially that you do not argue that TWC has any objection itself to disclosure of the requested information. Because the request seeks "evaluation documents" in addition to the proposal, and because you have not submitted for our review any evaluation documents relating to the request for offers, we assume that you have released to the requestor any evaluation documents which exist.

Because the property and privacy rights of a third party may be implicated by the release of the requested information, you notified the successful bidder, Keane, Inc., whose information is responsive to the request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). The third

party notice must include a copy of the written request for information and a statement in the form prescribed by the attorney general. That statement must tell the third party of its right to submit in writing to the attorney general specific reasons as to why the requested information should be withheld from public disclosure. You provided this office a copy of the notice you sent to Keane, Inc., which is in compliance with the requirements of section 552.305 of the Government Code.

This office has not received any arguments or briefs from Keane, Inc., to support a claim that the information should be withheld as a trade secret or as protected commercial or financial information under section 552.110. Therefore, we have no basis to conclude that the company's proposal is excepted from disclosure by section 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). TWC must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ljp

Ref: ID# 135586

Encl. Submitted documents

cc: Mr. Randy Schleier
Amdahl
816 Congress Avenue, Suite 1100
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(w/o enclosures)

cc: Mr. James T. Brewer
Keane, Inc.
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Austin, Texas 78746
(w/o enclosures)